Law enforcement, retention of evidence guidelines

Number: INFORMAL

Date: August 25, 2011

Subject:
Law enforcement, retention of evidence guidelines

Ms. Jerri A. Blair
Wildwood City Attorney
Post Office Box 130
Tavares, Florida 32778-0130

Dear Ms. Blair:

You ask this office to provide guidelines as to how long a law enforcement agency should maintain evidence.

According to your letter, a question has arisen regarding the required retention time for evidence in cases in which an arrest has not been made or a criminal investigation has been pursued, but no charges have been filed. You note that some law enforcement agencies maintain the evidence until the statute of limitations has run while others utilize the G2 records retention schedule. You state that the Wildwood police department would like this office to provide some guidelines as to how long to maintain the evidence.

You do not identify the type of evidence in question. Accordingly, any comment must be general in nature. Moreover, as discussed in this office's statement of policy,[1] Attorney General Opinions are intended to address questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy. To the extent that the retention of evidence is not governed by statute or rule, the determination of how long to keep evidence appears to one that must be made by the agency itself, after taking into consideration the factors relevant to the particular case. The following informal comments, however, are offered in an effort to be of some assistance.

For evidence that constitutes a public record within the meaning of Chapter 119, Florida Statutes, section 257.36(6), Florida Statutes, states that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [Division of Library and Information Services in the Department of State]."[2] As you are aware, the division has adopted a General Records Schedule GS2 for law enforcement agencies which may be used to determine the retention and destruction guidelines for various records.[3] I would note that while the retention schedules establish a minimum length of time a record must be retained, they do not preclude an agency from retaining its records for a longer period of time if it deems it appropriate.[4] As stated in section 119.021(2)(c), Florida Statutes, "[e]ach public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36." (e.s.)

Similarly, absent an applicable statute or rule, the disposition of evidence not constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency's determination that it is no longer needed. While such a determination is one that the law enforcement agency, not this office, must make, the determination by some law enforcement agencies to dispose of evidence once the statute of limitations has run appears reasonable as a guideline for the minimum time to retain evidence not otherwise governed by statute or rule. You may wish to contact the Florida Department of Law Enforcement for advice on this issue.[5] You may also wish to discuss this issue with the local state attorney who serves as the prosecuting officer for the judicial circuit to determine what that office deems appropriate.

I hope that the above comments may be of some assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

---

[1] Available online at: http://myfloridalegal.com/opinions

[2] And see s. 119.021(2)(a), Fla. Stat., stating that the "Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records."

[3] See Op. Att'y Gen. Fla. 04-51 (2004), stating that documentary evidence obtained by police department is a public record subject to retention schedule approved by Department of State but recognizing that s. 847.011(7), Fla. Stat., relating to possession of obscene materials, provides clear direction to a law enforcement agency for the disposition of obscene materials in its possession.

[4] See "The Basics of Records Management," Florida Department of State, Division of State Library and Archives, revised 2009, at p.13, available online at: /files/pdf/page/6741D1FD746DBFD8852578F700741E26/basics.pdf, providing:

"All of these retention schedules establish the MINIMUM length of time a record series must be maintained. Retention schedules do not tell you when you must dispose of records; they tell you how long you must retain records before you can dispose of them. Agencies have the discretion to retain records beyond the minimum retention requirements if needed for administrative, legal, or other purposes."

[5] Cf. s. 943.08(2), Fla. Stat., providing that the Criminal and Juvenile Justice Information Systems Council shall "adopt uniform information exchange standards, methodologies, and best practices, applying national standards and models when appropriate, in order to guide local and

state criminal justice agencies when procuring, implementing, or modifying information systems."